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January 20, 2005

DATE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors:	KINARD et al	Group Art Unit: 1761
Serial No.:	09/933,291	Examiner: Madsen, Robert
Filing Date:	August 20, 2001	Attorney Docket No.: D-43502-01

Title: "CASE-READY PACKAGE HAVING ABSORBENT PAD"

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APPEAL BRIEF UNDER 37 CFR § 41.37

Sir:

This Brief is being filed in triplicate and further to the Notice of Appeal filed 17 September 2004, which is datestamped 20 September 2004 by the OIPE. The two-month period for the filing of the brief is extended two months, i.e., through 20 January 2005, by the accompanying request for a 2-month extension of time. Pursuant to 37 CFR §41.20(b)(2), please charge Deposit Account No. 07-1765 in the amount of $500.00 for filing this Brief. This sheet is being filed in duplicate.

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(1) Real Party in Interest

The real party in interest is Cryovac, Inc., assignee of the above-referenced patent application.

(2) Related Appeals and Interferences

There are no other appeals, interferences or judicial proceedings known to Appellant, Appellant's legal representative, or Assignee which may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The claims on appeal are pending Claims 1, 5-10, and 12-24. A copy of Claims 1, 5-10, and 12-24 appears in the Appendix. Claims 7-10, 12-14, 16-18, 22, and 24 are as originally filed. Claims 1, 5, 6, 15, 19-21, and 23 have been amended once. Claims 2-4 and 11 stand canceled.

(4) Status of Amendments

No amendment has been filed after the Notice of Appeal filed 20 September 2004. The only amendment filed before the filing of the Notice of Appeal has been entered.

(5) Summary of the Claimed Subject Matter

As a first aspect, the invention is directed to a case-ready package (10) for containing a food product (F) which exudes juice and which has a support member (11), a lid member (12) comprising a flexible film, and an absorbent pad (13). [Fig 1, Fig 2, Fig 3, Page 6 lines 1-3] The absorbent pad (16) comprises an upper web (15) comprising a flexible film, a liquid-permeable lower web (14) comprising nonwoven fiber having a hydrophilic composition thereon, and an absorbent layer (16) between the upper web (15) and the lower web (14). [Fig 2, Fig 3, Page 6 lines 3-6] The upper and lower webs (15 and 14) each extend outward of the absorbent layer (16), the upper and lower webs (15 and 14) are attached to one another around an entire outer perimeter portion of the pad (13). [Fig 2, Fig 3, Page 6 lines 6-10] The upper and lower webs (15 and 14) together surround and contain the absorbent layer (16), and the case-ready package (10) further comprises modified atmosphere or vacuum between the support member (11) and the lid member (12). [Fig 2, Fig 3, Page 6 lines 8-10 and lines 16-17] The nonwoven fiber comprises at least one member selected from the group consisting of polyolefin, polyamide, and polyester. [Page 7 lines 17-19]

Preferably, the modified atmosphere comprises oxygen in an amount of from 60 to 80 percent, based on total atmospheric weight within the package. [Page 6 lines 17-19]

Preferably, the hydrophilic composition comprises at least one member selected from the group consisting of polysorbate, ethoxylated linear alcohol, fatty amine oxide, alkanolamide, and block copolymers of ethylene oxide or propylene oxide with dimethylsiloxane that are coupled to polar groups containing a hydrophilic moiety. [Page

8 lines 1-5] Preferably, the hydrophilic composition is present on the second web in an amount of from about 0.1 to 10 weight percent, based on the weight of the lower web. [Page 8 lines 5-8]

As a second aspect, the invention is directed to a packaged product in which the package is as set forth in the first aspect of the invention, described above. The packaged product has within the package a food product (F) which exudes juice. [Fig. 1; Page 9 lines 4-8, Page 10 lines 5-7]

As a third aspect, the present invention pertains to a process for making a case-ready package for containing a food product which exudes juice. [Fig 1, Page 9 lines 9-10] The process comprises (A) placing a product to be packaged on a support member having a base; (B) placing an absorbent pad on the support member; (C) evacuating atmosphere from around the product and support member; and (D) placing a lid member over the product and the support member so that the product is surrounded by the lid and the support member. [Fig 1, Fig 2, Fig 3, Page 9 lines 10-16] The absorbent pad is in accordance with the first aspect of the invention, set forth above. [Page 9 lines 16-17]

(6) Grounds of Rejection to be Reviewed on Appeal

I. Whether Claims 1, 6-10, 14-18, 21, and 22 Are Unpatentable under 35 USC 103(a) as Obvious over SANFILIPPO et al '411 in view of DARNETT

II. Whether Claim 5 Is Unpatentable under 35 USC 103(a) as Obvious over SANFILIPPO et al '411 in view of DARNETT further in view of WILES

III. Whether Claim 13 Is Unpatentable under 35 USC 103(a) as Obvious over SANFILIPPO et al '411 in view of DARNETT further in view of MILLER

IV. Whether Claims 19 and 20 Are Unpatentable under 35 USC 103(a) as Obvious over SANFILIPPO et al '411 in view of DARNETT further in view of BAIR and LeKHAC

V. Whether Claims 23 and 24 Are Unpatentable under 35 USC 103(a) as Obvious over SANFILIPPO et al '411 in view of DARNETT

NOTE: Appellants direct attention to the fact that Claim 12 stand objected to as depending from a rejected base claim, but have been indicated to be allowable if rewritten in independent form. Appellants have chosen not to amend Claims 12, as Appellants contend that the rejected base Claims 1 and 11 are directed to patentable subject matter.

(7) Argument

I. Claims 1, 6-10, 14-18, 21, and 22 Are Patentable Over SANFILIPPO et al '411 in view of DARNETT

Appellants contend that Claims 1, 6-10, 14-18, 21, and 22 are patentable over U.S. Patent No. 6,221,411 B1, to Sanfilippo et al ("SANFILIPPO et al") in view of WO 9730909, to Darnett ("DARNETT"). Section 5 of the final Office Action of 10 May 2004 states that SANFILIPPO et al teaches a meat product in a package comprising an absorbent pad, a tray, and a lid over the product, with the tray sealed under less than 1% oxygen atmosphere, and that the tray can comprise foam, but that SANFILIPPO et al fails to disclose the particular structure of the soaker pad. Appellants acknowledge that SANFILIPPO et al discloses this combination of features, and that SANFILIPPO et al is indeed silent on the structure of the soaker pad

Section 6 of the final Office Action states that DARNETT teaches absorbent pads for meat packages offering the dual advantages of (a) absorbing the meat juice even when the tray is presented at an angle, and (b) preventing the extruding of super absorbent gel from the pad. The 10 May final Office Action goes on to state that DARNETT teaches that the absorbent pad comprises an upper web made from a water impermeable flexible film which optionally comprises microperforations, a paper layer, and super absorbent in granular form, *"...and a lower non-woven fibrous web having a hydrophilic composition thereon (i.e. viscose) that draws liquid into the pad..."* (see Page 6 lines 10-12 of the 10 May final Office Action), with the upper and lower webs of the bad being either heat sealed or adhesively sealed. Based on this reasoning, the final Office Action concludes that it would have been obvious to modify SANFILIPPO et al to include the absorbent pad of DARNETT and thereby arrive at the invention of Appellants' Claim 1.

Appellants contend that the final Office Action fails to set forth a prima facie case of obviousness because DARNETT does not teach or suggest Appellants' recited:

> ...liquid-permeable lower web comprising nonwoven fiber having a hydrophilic composition thereon, the nonwoven fiber comprising at least one member selected from the group consisting of polyolefin, polyamide, and polyester.... [see Appellants' independent Claims **1**, 21, and 23]

Appellants again direct attention to the disclosure in DARNETT of an absorbent pad comprising

> ... a lower non-woven fibrous web having a hydrophilic composition thereon (i.e.viscose) that draws liquid into the pad..." [Page 6 lines 10-12 of the 10 May final Office Action]

This disclosure in DARNETT is *not* the equivalent of the above-quoted portion from Appellants' independent Claims 1, 21, and 23. More particularly, DARNETT discloses an absorbent pad having a lower non-woven fibrous web comprising viscose. Viscose is well known to be a cellulose based material which is used to make fibers. As with wood (which is also cellulose based), viscose is water absorbent. The water absorbency of the viscose fiber is certainly at least one of the reasons DARNETT utilizes viscose fibers in the lower web of the soaker pad. There is no disclosure that the viscose fiber has any composition thereon. Rather, it is the viscose itself which is water absorbent.

In stark contrast, Appellants' claims recite a lower web comprising *a nonwoven fiber having a hydrophilic composition thereon.* This composition is a substance *on* the fiber itself, rather than *being* the fiber itself. This distinction is made more apparent by Appellants' further recitation that the fiber comprises at least one member selected from the group consisting of polyolefin, polyamide, and polyester. Each of polyolefin, polyamide, and polyester is known to be hydrophobic, i.e., non-absorbent. The

hydrophobic polyolefin, polyamide, or polyester fiber present in the lower web of Appellants' soaker pad has the hydrophilic coating thereon in order to cause the fiber to serve as a component of a water-absorbent structure in the lower web. DARNETT does not teach or suggest any coating on the fiber of the lower web, not to mention a hydrophilic coating on a hydrophobic fiber comprising polyolefin, polyamide, and/or polyester. Likewise, SANFILIPPO et al is silent on the structure of the pad, as stated in the 10 May 2004 Office Action. Thus, it is apparent that SANFILIPPO et al in view of DARNETT does not rise to the level of establishing a prima case of obviousness of any one or more of Appellants' Claims 1, 6-10, 14-18, 21, and 22. Accordingly, this rejection should be reversed.

II. Claim 5 Is Patentable Over SANFILIPPO et al '411 in view of DARNETT further in view of WILES

Appellants' Claim 5 recites a case-ready package according to Claim 1 wherein the modified atmosphere comprises oxygen in an amount of from 60 to 80 percent, based on total atmospheric weight within the package. The 10 May 2004 final Office Action relies upon SANFILIPPO et al and DARNETT as set forth under heading I above, and further states that GB 2296905A, to Wiles ("WILES") teaches an improvement over the dual lid packaging of SANFILIPPO et al in that fresh cuts of meats can be stored for about 9 days while the meat remains red in color by providing a 60-80% oxygen mixture in a single lid configuration, and that WILES also teaches that the type of gas selected depends upon the type of meat stored in the package, and therefore that it would have been obvious to select a 0-80% oxygen atmosphere since WILES teaches this type of atmosphere for red meats.

Appellants contend that the 10 May 2004 final Office Action fails to set forth a prima facie case of obviousness of Claim 5. Appellants acknowledge that WILES teaches the use of 60-80% oxygen inside the package for the packaging of fresh meat. Nevertheless, since Appellants' Claim 5 depends from Claim 1, in order to establish a prima facie case of obviousness, the entire combination of features from Claim 1 and Claim 5 must have been obvious from SANFILIPPO et al in view of DARNETT further in view of WILES. Since neither SANFILIPPO et al nor DARNETT nor WILES teaches or suggests a lower web comprising a

> ...liquid-permeable lower web comprising nonwoven fiber having a hydrophilic composition thereon, the nonwoven fiber comprising at least one member selected from the group consisting of polyolefin, polyamide, and polyester.... [see Appellants' independent Claims **1**, 21, and 23],

the 10 May Office Action fails to set forth a prima facie case of obviousness of Claim 5 for at least the same reasons that the 10 May Office Action fails to set forth a prima facie case of obviousness of Claim 1 as unpatentable over SANFILIPPO et al in view of DARNETT. Without some teaching or suggestion of the above-quoted excerpt from Appellants' Claim 1, no prima facie case of obviousness has been made out. Appellants' recited liquid permeable lower web comprising nonwoven fiber having a hydrophilic composition thereon does not read on the viscose fibers in the nonwoven lower web of DARNETT. Accordingly, the rejection of Claim 5 as obvious over SANFILIPPO et al in view of DARNETT further in view of WILES should be reversed, as no prima facie case of obviousness has been made out in the 10 May Office Action.

III. Claim 13 Is Patentable Over SANFILIPPO et al '411 in view of DARNETT further in view of MILLER

Appellants' Claim 13 recites a case-ready package according to Claim 1, wherein the absorbent layer comprises a layer of wood fluff and a layer of tissue paper. The 10 May 2004 final Office Action relies upon SANFILIPPO et al and DARNETT as set forth under heading I above, and after acknowledging that SANFILIPPO et al as modified by DARNETT is silent with respect to teaching the absorbent layer as including both wood fluff and a layer of tissue paper. The 10 May final Office Action goes on to state that U.S. Patent No. 4,321,997, to Miller ("MILLER") teaches that it is conventionally known to use wood fluff in an absorbent pad and to combine it with a tissue layer to prevent wood fluff dust from exiting openings in the pad and contaminating the pad. On this basis, the Office Action concludes that it would have been obvious to have included an absorbent layer with both wood fluff and tissue paper since MILLER teaches that wood fluff is a known absorber and preferably to combine the wood fluff with the tissue paper to prevent wood fluff dust from exiting the pad and contaminating the food.

Appellants contend that the 10 May 2004 final Office Action fails to set forth a prima facie case of obviousness of Claim 13. Appellants acknowledge that MILLER teaches an absorbent pad comprising both wood fluff and tissue-like paper wadding. Nevertheless, since Appellants' Claim 13 depends from Claim 1, in order to establish a prima facie case of obviousness, the entire combination of features from Claim 1 and Claim 13 must have been obvious from SANFILIPPO et al in view of DARNETT further in view of MILLER. Since neither SANFILIPPO et al nor DARNETT nor MILLER teaches or suggests a lower web comprising a:

> ...liquid-permeable lower web comprising nonwoven fiber having a hydrophilic composition thereon, the nonwoven fiber comprising at least one member selected from the group consisting of polyolefin, polyamide, and polyester.... [see Appellants' independent Claims **1**, 21, and 23],

the 10 May Office Action fails to set forth a prima facie case of obviousness of Claim 13 for at least the same reasons that the 10 May Office Action fails to set forth a prima facie case of obviousness of Claim 1 as unpatentable over SANFILIPPO et al in view of DARNETT. Without some teaching or suggestion of the above-quoted excerpt from Appellants' Claim 1, no prima facie case of obviousness has been made out. Appellants' recited liquid permeable lower web comprising nonwoven fiber having a hydrophilic composition thereon does not read on the viscose fibers in the nonwoven lower web of DARNETT. Accordingly, the rejection of Claim 13 as obvious over SANFILIPPO et al in view of DARNETT further in view of MILLER should be reversed, as no prima facie case of obviousness has been made out in the 10 May Office Action.

IV. Claims 19 and 20 Are Patentable Over SANFILIPPO et al '411 in view of DARNETT further in view of BAIR and LeKHAC

Appellants' Claim 19 recites the case ready package according to Claim 1, wherein the hydrophilic composition (i.e., the hydrophilic composition on the on the nonwoven fiber) comprises at least one member selected from the group consisting of polysorbate, ethoxylated linear alcohol, fatty amine oxide, alkanolamide, and block copolymers of ethylene oxide or propylene oxide with dimethylsiloxane that are coupled to polar groups containing a hydrophilic moiety. Appellants' Claim 20 depends from Claim 19 and recites the hydrophilic composition as being present in an amount of from about 0.1 to 10 weight percent, based on the weight of the lower web.

The 10 May Office Action states that SANFILIPPO et al as modified by DARNETT teaches fibers treated with hydrophilic compositions such as viscose that draw liquid into the pad, but are silent in teaching a hydrophilic composition as recited in Appellants' Claim 19. The Office Action then states that U.S. Patent No. 5,135,787, to Bair ("BAIR") teaches an absorbent pad wherein the outer web comprises non-woven polyester fibers with a wetting agent to impart hydrophilic character which includes cationic, anionic, nonionic or amphoteric surfactants such that the outer layers expand to contain the super absorbent and which also better distribute the fluid over the pad to overcome any possible clogging of the pores of the outer web, as well as to facilitate sealing.

The Office Action goes on to state that U.S. Patent No. 4,743,244, to LeKhac ("LeKHAC") teaches enhancing the absorbing characteristics of polymers by adding non-ionic surfactant, such as block copolymers of ethylene oxides, including poly(oxyethylene).

In response, Appellants contend that the Office Action fails to set forth a prima facie case of obviousness of Claims 19 and 20. Appellants again point out that contrary to the statements in the 10 May Office Action, DARNETT does not teach or suggest a:

> ...liquid-permeable lower web comprising nonwoven fiber having a hydrophilic composition thereon, the nonwoven fiber comprising at least one member selected from the group consisting of polyolefin, polyamide, and polyester.... [see Appellants' independent Claims **1**, 21, and 23].

Rather, DARNETT teaches a bottom sheet which is a polyester/viscose fiber blend which is resin bonded and which has a low density polyethylene scatter coating on the inside of the product which provides the sheet with adequate thermal bonding with other substrates. DARNETT further discloses that the non-woven fabric "wets out instantaneously" [see DARNETT at Page 11 lines 35-38] and draws liquids into the fabric once contact with

liquid has been made. DARNETT further states that the fabric has an "adequate thermal bond" with other substrates and that it typically has 22% thermoplastic fiber and 78% cellulose fiber. [See DARNETT at Page 11 line 29 through Page 12 line 10.] Thus, it is clear that the non-woven fabric of DARNETT has adequate absorbency with respect to liquids with which it comes into contact.

As a result of the disclosure of absorbency in DARNETT, Appellants contend that one of ordinary skill in the art would not have been motivated to modify DARNETT with BAIR or LeKHAC. More particularly, one of ordinary skill in the art would have utilized the 78% cellulose fiber / 22% thermoplastic fiber bottom sheet of DARNETT, and thereby avoided the need for the use of any hydrophilic composition on the fibers, as 78% of the fibers are viscose, which is a cellulose-based hydrophilic material. Moreover, as DARNETT clearly discloses that the non-woven fabric "instantaneously wets out", there is clearly no need for any additional hydrophilicity. As a result, one of ordinary skill in the art at the time the invention was made would not have had any motivation to look to any further means of rendering the bottom sheet of DARNETT any more hydrophilic than it already is. Thus, there is no motivation to even look to change the level of hydrophilicity of the lower web of DARNETT.

Appellants further contend that the motivation referred to in the Office Action is not motivation which would have caused one of ordinary skill in the art to have modified DARNETT in a manner to result in Appellants' claimed invention. More particularly, the Office Action states that there would have been motivation to add the wetting agent "...such that the outer layers expand to contain the super absorbent...." Appellants acknowledge that Column 4 lines 46-51 of BAIR states that the hydrophilic outer fabric performs the

function to "expandably contain the SAP-containing web...." However, one of ordinary skill in the art would have realized that the viscose-fiber-containing non-woven lower web of DARNETT, in "wetting out instantaneously", would undoubtedly perform in the same manner as BAIR, there is no reason to substitute the hydrophilic outer fabric layers of BAIR for the polyester/viscose fiber blend of DARNETT. Thus, even if one of ordinary skill in the art knew BAIR discloses the use of a wetting agent on polyester homopolymer or polyester copolymer fibers, the expansion of the lower web to contain the superabsorbent would not have been a basis for using modifying the polyester/viscose fiber blend of DARNETT by the addition of a wetting agent, because the "instantaneous wetting out" of the lower web of DARNETT already expandably contains any superabsorbent polymer granules in the absorbent pad.

The Office Action also errs in stating that motivation lies in the disclosure in BAIR of the use of the wetting agent to "...better distribute the fluid over the pad to overcome any possible clogging of the pores of the outer web...." The "clogging of the pores" of the outer fabric is unrelated to the presence of the wetting agent on the fibers. Rather, BAIR states that the clogging of the pores of the outer fabric is due to swelling of the superabsorbent particles in the pad. [See BAIR at Col. 1 lines 60-65.] Thus, the clogging of the pores of the nonwoven fabric would not be affected by the presence of the wetting agent on the fibers. Moreover, the maldistribution BAIR refers to is not maldistribution of the fluid over the pad, but rather is maldistribution of the superabsorbent powder to a particular part of the pad.

Still further, the Office Action errs in stating that motivation lies in the wetting agent having the ability to "...facilitate sealing." BAIR states that the hydrophilic outer fabric

layers of the pad fabric perform three functions, with the third function being to facilitate sealing of the cut edges. [See BAIR at Col. 4 lines 46-51.] There is no indication in BAIR that it is the hydrophilic composition which would facilitate sealing. Moreover, one of ordinary skill in the art at the time the invention was made would have realized that it is the presence of the thermoplastic component of the nonwoven fabric of BAIR, i.e., the polyester homopolymer and/or polyester copolymer which facilitates sealing, not the wetting agent. Thus, the "facilitation of sealing" disclosed in BAIR is clearly not motivation to modify DARNETT by applying wetting agent to the polyester/viscose blend thereof.

In summary, Appellants note that Column 4 lines 46-53 of BAIR disclose the hydrophilic outer fabric as performing three functions, including (1) expandably containing the SAP-containing web, (2) wicking to distribute aqueous fluids over the entire pad, and (3) facilitate sealing of the cut edges of the pad. Appellants contend that function 1, i.e., to expandably contain the SAP-containing web, is already met by the absorbency of the polyester/viscose fiber blend of DARNETT, and hence this feature cannot serve as motivation to modify DARNETT by the addition of a wetting agent to the fibers of the lower sheet. Appellants contend that functions 3, i.e., to facilitate sealing, is a result of the fabric itself, not the wetting agent placed onto the fabric, and hence cannot serve as motivation to modify DARNETT by the addition of a wetting agent to the fibers of the lower sheet. As such, they cannot serve as motivation to modify DARNETT by the addition of wetting agent. As to the wicking function, i.e. function 2, Appellants acknowledge that this is related to the wetting agent, but Appellants further note that increasing the hydrophilicity of DARNETT is not needed because the polyester/viscose fiber blend of DARNETT already "wets out instantaneously and draws liquid into the fabric once contact

has been made...." [See DARNETT Page 11 line 37 through Page 12 line 2.] Thus, Appellants contend that BAIR does not provide the requisite motivation to modify DARNETT to arrive at Appellants' invention.

In response to the statements in the Office Action pertaining to LeKHAC, Appellants note that LeKHAC is directed to water absorbent polymers, i.e., superabsorbent polymers, such as polyethylene oxides. While the Office Action characterizes block co-polymers of ethylene oxides including poly(oxyethylene) as "non-ionic surfactants", there is no indication in LeKHAC that poly(oxyethylene) is a non-ionic surfactant. The Office Action does not refer to any column and line of LeKHAC containing the phrase "non-ionic surfactant", and a review of LeKHAC failed to reveal this phrase as being present in LeKHAC. Moreover, the Office Action implies that poly(oxyethylene) is a non-ionic surfactant based on Appellants' Claim 19. However, Appellants note that Claim 19 does not recite a poly(oxyethylene) as a non-ionic surfactant. Rather, Claim 19 recites "...block copolymers of ethylene oxide or propylene oxide with dimethylsiloxane *that are coupled to polar groups containing a hydrophilic moiety*". The Office Action does not state that LeKHAC discloses such copolymers which are coupled to polar groups containing a hydrophilic moiety. If the copolymer does not contain a hydrophilic moiety, there is no reason to believe that the copolymer would be a non-ionic surfactant. As such, it appears that the poly(oxyethylene) and similar polymers disclosed in LeKHAC do not meet the "...block copolymers of ethylene oxide or propylene oxide with dimethylsiloxane that are coupled to polar groups containing a hydrophilic moiety" recited in Appellants' Claim 20.

V. Claims 23 and 24 Are Patentable Over SANFILIPPO et al '411 in view of DARNETT

Appellants' Claim 23 is directed to a process for making a case-ready package for containing a food product which exudes juice. The process of Claim 23 comprises placing a product on a support member having a base, placing an absorbent pad on the support member, evacuating atmosphere from around the product and support member, placing a lid member over the product and the support member so that the product is surrounded by the lid and the support member. The absorbent pad is recited as having the same features recited in Appellants' Claim 1. Appellants' Claim 24 depends from Claim 23, and further recites surrounding the product and support member with a modified atmosphere after evacuation of the atmosphere but before placing the lid member over the product and support member.

The 10 May Office Action states that SANFILIPPO et al teaches placing both a meat product and an absorbent pad on a tray, placing a lid over the product and tray, and evacuating the atmosphere from the product and support member, with a combination of both vacuum and modified atmosphere being alternatively supplied, which includes supplying a modified atmosphere after evacuation but before sealing as recited in Claim 24. The Office Action again states that SANFILIPPO et al is silent in teaching the particular structure of the absorbent pad, but relies upon DARNETT in the same manner as in the rejection of Claim 1. Importantly, the Office Action again states that DARNETT teaches the pad as comprising a lower non-woven fiber layer having a hydrophilic composition (i.e. viscose). The Office Action concludes that it would have been obvious to modify SANFILIPPO et al and include the absorbent pad of DARNETT.

Appellants contend that the 10 May 2004 final Office Action fails to set forth a prima facie case of obviousness of Claims 23 and 24. As Appellants have already argued under heading "I" above, since neither SANFILIPPO et al nor DARNETT nor WILES teaches or suggests a lower web comprising a

> ...liquid-permeable lower web comprising nonwoven fiber having a hydrophilic composition thereon, the nonwoven fiber comprising at least one member selected from the group consisting of polyolefin, polyamide, and polyester.... [see Appellants' independent Claims 1, 21, and **23**],

the 10 May Office Action fails to set forth a prima facie case of obviousness of Claims 23 and 24 for at least the same reasons that the 10 May Office Action fails to set forth a prima facie case of obviousness of Claim 1 as unpatentable over SANFILIPPO et al in view of DARNETT. Without some teaching or suggestion of the above-quoted excerpt from Appellants' Claim 23, no prima facie case of obviousness has been made out. Appellants' recited liquid permeable lower web comprising nonwoven fiber having a hydrophilic composition thereon does not read on the viscose fibers in the nonwoven lower web of DARNETT. Accordingly, the rejection of Claims 23 and 24 as obvious over SANFILIPPO et al in view of DARNETT should be reversed, as no prima facie case of obviousness has been made out in the 10 May Office Action.

Conclusion

Appellant respectfully submits that, for all of the foregoing reasons, Claims 1, 5-10, and 12-24 are patentable over the art of record. The rejection of those claims should therefore be reversed, with a view towards allowance.

Respectfully submitted,

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(8) Claims Appendix

1. A case-ready package for containing a food product which exudes juice, comprising:

(A) a support member;

(B) a lid member comprising a flexible film; and

(C) an absorbent pad comprising:

(i) an upper web comprising a flexible film;

(ii) a liquid-permeable lower web comprising nonwoven fiber having a hydrophilic composition thereon, the nonwoven fiber comprising at least one member selected from the group consisting of polyolefin, polyamide, and polyester; and

(iii) an absorbent layer between the upper web and the lower web;

wherein the upper and lower webs each extend outward of the absorbent layer, the upper and lower webs being attached to one another around an entire outer perimeter portion of the pad, with the upper and lower webs together surrounding and containing the absorbent layer, and the case-ready package further comprising modified atmosphere or vacuum between the support member and the lid member.

5. The case-ready package according to Claim 1, wherein the modified atmosphere comprises oxygen in an amount of from 60 to 80 percent, based on total atmospheric weight within the package.

6. The case-ready package according to Claim 1, wherein the modified atmosphere comprises atmospheric oxygen in an amount less than 5% by volume.

7. The case-ready package according to Claim 1, wherein atmosphere has been substantially evacuated from within the package.

8. The case-ready package according to Claim 1, wherein the upper web of the absorbent pad comprises at least one member selected from the group consisting of olefin homopolymer, olefin copolymer, polyester, and polyamide.

9. The case-ready package according to Claim 8, wherein the upper web of the absorbent pad comprises at least one member selected from the group consisting of ethylene homopolymer, propylene homopolymer, ethylene copolymer, propylene copolymer, polyester, and polyamide.

10. The case-ready package according to Claim 1, wherein the upper web of the absorbent pad is water-impermeable.

12. The case-ready package according to Claim 11, wherein the nonwoven fibers comprise at least one member selected from the group consisting of polyethylene, polypropylene, polyester, and polyamide.

13. The case-ready package according to Claim 1, wherein the absorbent layer comprises a layer of wood fluff and a layer of tissue paper.

14. The case-ready package according to Claim 1, wherein the absorbent layer further comprises superabsorbent.

15. The case-ready package according to Claim 14, wherein at least some of the superabsorbent is present in granular form.

16. The case-ready package according to Claim 1, wherein the upper and lower webs are attached with a heat seal.

17. The case-ready package according to Claim 1, wherein the upper and lower webs are attached with an adhesive.

18. The case-ready package according to Claim 1 wherein the support member comprises foam.

19. The case-ready package according to Claim 1, wherein the hydrophilic composition comprises at least one member selected from the group consisting of polysorbate, ethoxylated linear alcohol, fatty amine oxide, alkanolamide, and block copolymers of ethylene oxide or propylene oxide with dimethylsiloxane that are coupled to polar groups containing a hydrophilic moiety.

20. The case-ready package according to Claim 19, wherein the hydrophilic composition is present on the second web in an amount of from about 0.1 to 10 weight percent, based on the weight of the lower web.

21. A packaged product comprising a food product which exudes juice in a case-ready package comprising:

(A) a support member;

(B) a lid member comprising a flexible film; and

(C) an absorbent pad comprising:

(i) an upper web comprising a flexible film;

(ii) a liquid-permeable lower web comprising nonwoven fiber having a hydrophilic composition thereon, the nonwoven fiber comprising at least one member selected from the group consisting of polyolefin, polyamide, and polyester; and

(iii) an absorbent layer between the upper web and the lower web;

wherein the upper and lower webs each extend outward of the absorbent layer, the upper and lower webs being attached to one another around an entire outer perimeter portion of the pad, with the upper and lower webs together surrounding and containing the absorbent layer, and the case-ready package further comprising modified atmosphere or vacuum between the support member and the lid member.

22. The packaged product according to Claim 21, wherein the food product comprises at least one member selected from the group consisting of meat, poultry, cheese, and produce.

23. A process for making a case-ready package for containing a food product which exudes juice, comprising:

(A) placing a product to be packaged on a support member having a base;

(B) placing an absorbent pad on the support member, the absorbent pad comprising:

(i) an upper web comprising a flexible film;

(ii) a liquid-permeable lower web comprising nonwoven fiber having a hydrophilic composition thereon, the nonwoven fiber comprising at least one member selected from the group consisting of polyolefin, polyamide, and polyester; and

(iii) an absorbent layer between the upper web and the lower web;

wherein the upper and lower webs each extend outward of the absorbent layer, the upper and lower webs being attached to one another around an entire outer perimeter portion of the pad, with the upper and lower webs together surrounding and containing the absorbent layer, and the case-ready package further comprising modified atmosphere or vacuum between the support member and the lid member;

(C) evacuating atmosphere from around the product and support member;

(D) placing a lid member over the product and the support member so that the product is surrounded by the lid and the support member.

Claim 24 (original): The process according to Claim 23, further comprising surrounding the product and support member with a modified atmosphere after evacuation of the atmosphere bit before placing the lid member over the product and support member.

(9) Evidence Appendix

No evidence described in 37 CFR §41.37(ix) was submitted by Appellant or entered by the Examiner.

(10) Related Proceedings Appendix

There are no other appeals, interferences or judicial proceedings known to Appellant, Appellant's legal representative, or Assignee which may be related to, directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.